

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Manal Saleem Abu Ghoush, RN

Registered Nurse License No. 574590

Respondent.

Case No. 2007-89

OAH No. L2006120840

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on April 19, 2008.

IT IS SO ORDERED March 19, 2008



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MANAL SALEEM ABU GHOSH, R.N.,

Registered Nurse License No. 574590

Respondent.

Case No. 2007-89

OAH No. L2006120840

PROPOSED DECISION

Gary Brozio, Administrative Law Judge, Office of Administrative Hearings, heard this matter in San Diego, California on January 9, 2008.

Carl W. Sonne, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H., R.N., Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

Manal Saleem Abu Ghosh, respondent, represented herself and was present throughout the proceeding.

FACTUAL FINDINGS

Background

1. On November 29, 2000, the Board of Registered Nursing (Board) issued Manal Saleem Abu Ghosh (respondent) Registered Nursing License Number 574590. The license is active and expires on February 29, 2008, unless renewed. There was no evidence of past discipline on respondent's license.
2. On October 10, 2006, complainant signed an Accusation seeking discipline on respondent's license because she had been convicted of a substantially related crime (battery in a hospital) and because she had a mental condition making it unsafe for her to practice nursing without being on probation. The Accusation also requested costs of investigation and enforcement.

3. Respondent filed a Notice of Defense, and a hearing was set for January 9, 2008.

4. On January 8, 2008, complainant filed a Supplement to the Accusation (Exh. 1) which changed the requested discipline from a probationary license to full revocation because new evidence demonstrated that respondent's alleged mental illness prevented her from safely practicing nursing.

5. The day of the hearing, the parties moved to seal the exhibits because they contained sensitive psychiatric records. The motion was granted.¹

Respondent's Psychiatric Hospitalizations

6. Respondent had undergone six psychiatric hospitalizations. The relevant facts are as follows:

- In April 2001, respondent was confined to a psychiatric hospital for 11 days. She presented with a severe psychosis.
- In May 2003, respondent was confined to a psychiatric hospital for an unspecified number of days and for an unspecified reason.
- In June 2003, respondent was confined to a psychiatric hospital for 11 days. She was delusional and had manic episodes with psychotic features.
- In July 2003, respondent was confined to the UCI medical center for nine days. She was admitted on a 72-hour hold and was certified for a 14-day commitment. (Welf. & Inst. Code, §§ 5150, 5250.) She was impulsive, paranoid, and violent. She attacked a nurse, which resulted in her conviction of battery in a hospital. She was diagnosed with bipolar disorder with psychotic features.
- In January 2004, respondent was confined to a psychiatric hospital for 12 days. She was admitted on a 72-hour hold and was certified for a 14-day commitment. She was refused to take her medications. She was spitting, yelling, delusional, and engaged in bizarre behavior. The discharge summary indicated that respondent had a history of medication non-compliance coupled with violent behavior. It also indicated that respondent had little insight or judgment. (Exh. 13 at 235.) She was diagnosed with schizoaffective disorder, bipolar type.

¹ Apart from the Board and its attorneys, no person shall view the exhibits without an order from the Office of Administrative Hearings or the Superior Court. The Proposed Decision has not been sealed, but care has been taken to disclose only those facts necessary to support the conclusion.

- In September 2005, respondent was confined to a psychiatric hospital for 14 days. She was taken to the hospital by her husband. She was delusional, agitated, and violent. The hospital staff was concerned about respondent's refusal to take her medications, except on an "as needed" basis because respondent continued to display poor insight. The hospital staff filed a legal petition to compel respondent take her medications daily, but the petition was unsuccessful. Respondent was discharged with a diagnosis of schizoaffective disorder, bipolar type.

Respondent's Conviction

7. On October 1, 2003, the Orange County District Attorney charged respondent with a violation of Penal Code section 243.2, subdivision (a)(1).² Respondent entered a no contest plea to the offense and was placed on a three years formal probation. Probation was terminated on February 7, 2006.

8. A police report indicated that respondent attacked a nurse at the UCI Medical Center. Respondent grabbed the victim's pony tail, pulled her down, and repeatedly hit her about the face and head.

Expert Testimony

9. Richard M. Sandor, M.D. (Dr. Sandor) was the only expert to testify at the hearing. He is a highly qualified psychiatrist with 22 years of experience. He formulated his opinions based on a review of respondent's medical records and upon his personal knowledge of the roles nurses play in hospitals.

10. In March 2006, Dr. Sandor formed the opinion that respondent had bipolar disorder, but that she could practice nursing if she was on probation, closely supervised, and in a low-stress position. When he formed his opinion, Dr. Sandor was unaware of respondent's September 2005 hospitalization. Thus, he mistakenly concluded that there had been a reasonable period of stability following respondent's January 2004 hospitalization.

11. In January 2008, complainant provided Dr. Sandor with evidence of respondent's September 2005 hospitalization (Exh. 17), which caused Dr. Sandor to conclude that respondent could not practice nursing safely even if placed on probation. Dr. Sandor's changed his opinion because: The September 2005 hospitalization also involved violence and severe delusions; it demonstrated that respondent had not been symptom-free as long as believed; it demonstrated that respondent could suffer a serious relapse after two years; it resulted in a second diagnosis of schizoaffective disorder, bipolar type, which is a

² That subdivision provides: "Except as otherwise provided in Section 243.6, when a battery is committed on school property, park property, or the grounds of a public or private hospital, against any person, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment."

more concerning diagnosis than bipolar disorder;³ nurses carry out doctors' orders without direct supervision and nursing work involves high stress; and one psychotic episode during nursing could cause serious injury or even death. Taken together, these factors showed that a longer period of stability was necessary before respondent could return to nursing. Dr. Sandor noted that there were nearly two years between the January 2004 and September 2005 hospitalizations, indicating that the passage of more than two years without a relapse was necessary to gain a degree of confidence in respondent's management of her illness. The risk to the public was too great at this time to permit her to return to nursing.

Respondent's Mitigation and Rehabilitation Evidence

12. Respondent is 32 years old and married. She has two children, ages seven and 11. Her husband is also a nurse. The family lives in Anaheim, California. The children are doing well under her care.

13. Respondent received her nursing degree from the University of Jordan in 1997. Thereafter, she moved to the United States, and, in 2000, she became licensed to practice in California. She worked at Garden Grove Hospital, where she once won an award as nurse of the year. She is not currently employed as a nurse, but she presented certificates establishing continuation education.

14. Respondent seemed to have little recollection of her battery conviction. She fully complied with probation, which was terminated early. She was remorseful.

15. Regarding the management of her mental illness, respondent was seeing Dr. Shanbhag, a psychiatrist and neurologist, on a quarterly basis. She was in no other support system or counseling. She pointed out that, in 2005, a judge denied the petition requesting that she be required to make her take medications daily. Since that time, she has been "doing well" taking her medications on an "as needed" basis. Respondent claimed that she had better insight into her condition. She could feel when she was "sick" and when she needed to take her medication, and sometimes she took her medications on a preventative basis. She was sleeping and eating well. She loved nursing and believed it was safe for her to return to practice.

16. Regarding costs, respondent was not working. Her husband, who was also a nurse, was the sole support of the family. Respondent said that her husband earned \$6,000 a month, that their rent was \$2,800 a month, and that they had a car payment of \$500. She appeared to have very little understanding of the family finances.

³ Schizoaffective disorder, bipolar type is a continuing thought disorder (rather than episodic) with both a psychotic and a mood component. People with this diagnosis are more fragile and display sensitivity to changes in medication.

Evaluation

17. Respondent's conviction is not the key issue in this case. The conviction was the result of a larger and far-more-concerning problem, which is mental illness. That illness is Schizoaffective disorder, bipolar type. Respondent's illness creates a very significant public danger if it is not properly managed. If respondent experienced a paranoid or psychotic episode during patient care, serious injury or death could result. Respondent did not properly manage her illness for many years, resulting in six hospitalizations from 2001 to 2005, after she became uncontrollably violent and delusional. Respondent lacked insight and exercised poor judgment in managing her illness, including her non-compliance in taking psychotropic medications. Although respondent believes that she can now manage her illness far more successfully, much evidence dispels this conclusion. Respondent is not a qualified psychiatrist. Her current psychiatrist did not testify on her behalf. Respondent lacked insight in the past. She failed to adequately manage her illness in the past. The only qualified expert who testified concluded that respondent was not safe to practice nursing now, and that more time was needed to assess whether she could return to the practice of nursing. Thus, clear and convincing evidence established that respondent's license must be revoked until such time that a qualified psychiatrist forms the opinion that her mental illness does not pose a public risk.

LEGAL CONCLUSIONS

Burden of Proof

1. Regarding the allegations seeking discipline, complainant had the burden to prove them by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Reality Projects, Inc. v. Smith* (1973) 32 Cal.App.3d 204, 212.) This standard is defined as "highly probable." (CACI § 201.)

2. Regarding the costs of investigation, complainant had the burden to prove them by a preponderance of evidence. (Evid. Code, § 115.) This standard is defined as "more likely to be true than not true." (CACI § 200.)

Substantially Related Conviction

3. The Board has authority to discipline a nurse's license for the conviction of a substantially related crime under Business and Professions Code sections 490 and 2761, subdivision (f). Title 16 of the California Code of Regulations (CCR), section 1444, sets forth the criteria of substantial relationship, which includes "[a]ssaultive or abusive conduct." The Board's "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (Guidelines) state that "assault and/or battery" constitute substantially related crimes.

4. Cause exists to impose discipline on respondent's license based on her conviction for battery in a hospital. This conclusion is based on Factual Findings 6-8 and Legal Conclusions 1 and 3-4.

Mental Illness

5. Under Business and Professions Code section 822,⁴ the Board has authority to revoke, suspend, or place a nurse's license on probation if the nurse's ability to practice the profession safely is impaired by mental illness.

6. Cause exists to impose discipline on respondent's license based on her ability to practice the profession safely due to mental illness. This conclusion is based on Factual Findings 6-11, 15, and 17 and Legal Conclusions 1 and 5-6.

Degree of Discipline

7. In reaching a decision in a disciplinary action, 16 CCR section 1444.5 requires the Board to consider the Guidelines. The Guidelines state that a criminal conviction for a substantially related crime constitutes unprofessional conduct. Revocation is the recommended discipline for violations of section 2761, subdivision (f). But a first-time offender with documented evidence of an on-going rehabilitation program may receive minimum discipline of revocation stayed with three years probation and conditions of probation 1-19. The Guidelines recommend suspension or revocation if a nurse is unable to practice the profession safely due to mental illness.

8. Respondent's mental illness prohibits her from practicing nursing safely at this time. Her battery conviction was a result of that mental illness and her mental illness compels the conclusion that respondent's license must be revoked. This conclusion is based on all Factual Findings and legal Conclusions.

⁴ Business and Professions Code section 822 provides:

"If a licensing agency determines that its licensee's ability to practice his or her profession safely is impaired because the licensee is mentally ill, or physically ill affecting competency, the licensing agency may take action by any one of the following methods:

- (a) Revoking the licensee's certificate or license.
- (b) Suspending the licensee's right to practice.
- (c) Placing the licensee on probation.
- (d) Taking such other action in relation to the licensee as the licensing agency in its discretion deems proper.

The licensing agency shall not reinstate a revoked or suspended certificate or license until it has received competent evidence of the absence or control of the condition which caused its action and until it is satisfied that with due regard for the public health and safety the person's right to practice his or her profession may be safely reinstated."

Reasonable Costs of Investigation

9. The Accusation seeks costs under Business and Professions Code section 125.3. That section provides in pertinent part:

“(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

(b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).”

10. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 did not violate due process. However, the court held that it was incumbent on the Board to exercise its discretion to reduce or *eliminate* cost awards in a manner that ensured section 317.5 did not “deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The Court set forth four factors that the Board was required to consider when deciding whether to reduce or eliminate costs. These were: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a “subjective” good faith belief in the merits of his position; (3) whether the chiropractor raised a “colorable challenge” to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

11. Since regulation 317.5 and section 125.3 have substantially the same language and seek the same sort of cost recovery, it is reasonable to extend the reasoning in *Zuckerman* to section 125.3.

12. Complainant submitted a certification of costs in the amount of \$27,309.50. These were not reasonable costs in this case. Complainant conceded that there was some duplication of effort in the litigation because of the number of lawyers who worked on the case. The case was not complex. The conviction was purely a documentary issue, the medical records were not particularly voluminous, and there was only one expert witness. Accordingly, the medical reasonable costs of prosecution and investigation were \$15,000.

13. Respondent made a colorable challenge to the discipline sought because she has actually avoided psychiatric hospitalization for two years, and she does appear to have increased her insight. Moreover, she presented evidence of inability to pay. She is not employed and the family would experience hardship paying a large cost bill. Accordingly, respondent shall pay the sum of \$7,500 upon reapplication for licensure.

ORDER

IT IS HEREBY ORDERED that Registered Nurse License Number 574590, issued to Respondent Manal Saleem Abu Ghoush, is revoked.

IT IS FURTHER ORDERED that Respondent pay the sum of \$7,500 in costs of investigation and prosecution upon reapplication for licensure.

DATED: 1/29/08



GARY BROZIO
Administrative Law Judge
Office of Administrative Hearings

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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

14 Manal Saleem Abu Ghoush, R.N.
2860 W. Ball Road, #G-3
15 Anaheim, CA 92806

16 Registered Nurse License No. RN574590

17 Respondent.

Case No. 2007-89

SUPPLEMENT TO ACCUSATION
SUBSTITUTING PARAGRAPHS 23
AND 25

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20 The following replaces paragraphs 23 and 25 of the Accusation as follows:

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22 23a. Dr. R.S. first opined that respondent could practice nursing safely with careful
23 medication management, a non-stressful work load, and close observation of her progress. Based
24 upon Dr. R.S.'s review of additional medical records not previously presented to him, Dr. R.S.
25 now opines, *inter alia*, that he is unable to predict that respondent's mental health will remain
26 stable, and that given the severity of delusional thinking and violent behavior during
27 respondent's prior psychotic episodes, respondent cannot, due to her mental illness, practice
28 nursing safely.

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25a. Respondent is subject to disciplinary action under Section 822 of the Code, in that she has been evaluated by a psychiatrist and it has been determined that respondent's ability to practice her profession safely is impaired because the respondent is mentally ill, as more particularly set forth above in paragraphs 16 through and including paragraph 23a above.

DATED: 1/8/2008

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10 **BEFORE THE**
11 **BOARD OF REGISTERED NURSING**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 2007-89

14 Manal Saleem Abu Ghoush, R.N.
2626 W. Ball Road, Unit N-1
15 Anaheim, CA 92806

ACCUSATION

16 Registered Nurse License No. RN574590

17 Respondent.
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19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N., Complainant, brings this Accusation solely
21 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board).

22 2. On or about November 29, 2000, the Board issued Registered Nurse
23 License Number RN574590, to Manal Saleem Abu Ghoush, (Respondent.) Said license was in
24 full force and effect at all times relevant herein, and will expire on February 29, 2008, unless
25 renewed.

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1 7. Section 2750 of the Code provides, in part, that the Board may discipline any
2 licensee, including a licensee holding a temporary or an inactive license, for any reason provided in
3 Article 3 (commencing with Section 2750) of the Nursing Practice Act.

4 8. Section 2761 of the Code states:

5 The board may take disciplinary action against a certified or licensed nurse
6 or deny an application for a certificate or license for any of the following:

7 (a) Unprofessional conduct, which includes, but is not limited to, the
8 following:

9

10 (f) Conviction of a felony or of any offense substantially related to the
11 qualifications, functions, and duties of a registered nurse, in which event the
12 record of the conviction shall be conclusive evidence thereof.

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14 9. Section 2765 of the Code states:

15 A plea or verdict of guilty or a conviction following a plea of nolo contendere
16 made to a charge substantially related to the qualifications, functions and duties of
17 a registered nurse is deemed to be a conviction within the meaning of this article. The
18 board may order the license or certificate suspended or revoked, or may decline to
19 issue a license or certificate, when the time for appeal has elapsed, or the judgment
20 of conviction has been affirmed on appeal or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under
22 the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw
23 his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
24 of guilty, or dismissing the accusation, information or indictment.

25 10. Section 482 of the Code provides:

26 Each board under the provisions of this code shall develop criteria to evaluate
27 the rehabilitation of a person when: . . . (b) Considering suspension or revocation of
28 a license under Section 490. Each board shall take into account all competent
evidence of rehabilitation furnished by the applicant or licensee.

11 11. Section 118, subdivision 9(b), of the Code provides that the suspension,
12 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction
13 to proceed with a disciplinary action during the period within which the license may be
14 renewed, restored, reissued or reinstated.

15 12. Section 1516, of title 16 of the California Code of Regulations sets forth
16 the Board's criteria for rehabilitation as follows:

17 (a) When considering the denial of a certificate of registration under

1 Section 480 of the Code, the Board, in evaluating the rehabilitation of the
2 applicant and his/her present eligibility for a certificate of registration, will
consider the following criteria:

3 (1) The nature and severity of the act(s) or crime(s) under
4 consideration as grounds for denial.

5 (2) Evidence of any act(s) committed subsequent to the act(s) or
6 crime(s) under consideration as grounds for denial which also could be
considered as grounds for denial under Section 480 of the Code.

7 (3) The time that has elapsed since commission of the act(s) or
crime(s) referred to in subdivision (1) or (2).

8 (4) The extent to which the applicant has complied with any
9 terms of parole, probation, restitution, or any other sanctions
lawfully imposed against the applicant.

10 (5) Evidence, if any, of rehabilitation submitted by the applicant.

11 (b) When considering the suspension or revocation of a certificate of
12 registration on the grounds that the registrant has been convicted of a crime, the
Board, in evaluating the rehabilitation of such person and his/her present
13 eligibility for a license, will consider the following criteria:

14 (1) Nature and severity of the act(s) or offense(s).

15 (2) Total criminal record.

16 (3) The time that has elapsed since commission of the act(s)
or offense(s).

17 (4) Whether the licensee has complied with any terms of parole,
18 probation, restitution or any other sanctions lawfully imposed against the
licensee.

19 (5) If applicable, evidence of expungement proceedings pursuant to
20 section 1203.4 of the Penal Code.

21 (6) Evidence, if any, of rehabilitation submitted by the licensee.

22 (c) When considering a petition for reinstatement of a certificate of
23 registration under Section 11522 of the Government Code, the Board shall
evaluate evidence of rehabilitation submitted by the petitioner, considering those
criteria of rehabilitation specified in subsection (b).

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1 18. On February 7, 2005, respondent pled nolo contendere to the allegations in
2 the criminal complaint. She was sentenced to three years of formal probation on several terms
3 and conditions including cooperating with the Probation Department in any plans for psychiatric
4 or psychological counseling.

5 19. On February 7, 2006, respondent's criminal probation was terminated.

6 20. On or about November 20, 2005, on behalf of the Board, an expert
7 psychologist reviewed respondent's psychiatric records and rendered an opinion that respondent
8 is not safe to return to the practice of nursing because of her refusal or inability to consistently
9 stay on her medications.

10 21. On February 1, 2006, the Board issued an Order requiring respondent to
11 submit to a psychological examination to determine whether she is mentally ill to such an extent
12 as to affect her ability to practice nursing safely, pursuant to Business and Professions Code
13 section 820.

14 22. Thereafter, and pursuant to the Board's Order, respondent's medical
15 records were reviewed and she was interviewed by R.S., M.D.

16 23. Dr. R.S. opines that based upon her diagnosis of Bi-Polar disorder,
17 respondent requires ongoing medication management and continued reevaluation by her
18 psychiatrist. In his opinion, respondent should be able to return to work on a modified work
19 schedule of "not too many hours a day, too many days a week, or too stressful a patient load."
20 Dr. R.S. further opines that as a condition to respondent returning to work she should be placed
21 on probation to monitor her compliance with taking her medications.

22 FIRST CAUSE FOR DISCIPLINE

23 (Conviction of a Substantially Related Crime)

24 24. Respondent is subject to disciplinary action under Sections 2761 and 490 of
25 the Code, in that she committed unprofessional conduct by sustaining a conviction of a
26 misdemeanor substantially related to the qualifications, functions, and duties of a registered
27 nurse, as more particularly set forth above in paragraphs 16 through and including paragraph 19.

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